IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 2 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

WALCHAND NAGAR SAHAKARI BANK LTD.

Versus

ALANG INDUSTRIAL GASES LTD.

Appearance:

1. COMPANY PETITION No. 2 of 2004

MR DAKSHESH MEHTA for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 27/08/2004

ORAL JUDGEMENT

The petitioner before this Court is the Co-operative Bank namely Walchand Nagar Sahakari Bank Ltd., registered under Maharashtra Co-operative Societies Act, 1960 and had filed this petition for winding up of the respondent-company u/s.433 (e) read with Section 434 of the Companies Act, 1956.

2. The case of the petitioner is that the respondent-company has availed bills discounting facilities from the petitioner bank. The petitioner has recorded all necessary monetary transactions in the name of the respondent-company in books of accounts during the course of its business. The respondent-company has issued cheques worth Rs.49,07,965/- towards discharge of its liabilities to the petitioner. The petitioner deposited the said cheques. However, the same were returned uncleared and hence the petitioner has filed said Special Civil Summary Suit No.4/2000 before the Court of Civil Judge (S.D.) at Baramati. The said suit was decided on 25th June, 2001 and decree was passed in favour of the petitioner bank for Rs.79,10,441/- together with interest at 12% p.a.from 1/1/2000 till actual realisation of the entire amount.

3. Despite the decree having been passed against the respondent-company no payment has been made to the petitioner and hence the petitioner has filed the present petition before this Court on 27/11/2003 for winding up of the respondent-company.

4. Mr.D.B.Mehta, the learned advocate appearing for the petitioner submits that before filing this petition, the petitioner bank issued statutory notice to the respondent-bank at its registered office on 7/9/2003. After filling of the petition, the Court has issued the notice on 28/1/2004 making it returnable on 3/3/2004. The Court has also permitted the petitioner to serve the notice to the respondent by R.P.A.D at the address of the marketing office at Mumbai. The said notice was duly served at the Mumbai office and the petitioner's advocate has received the reply on 23/4/2004, wherein it was stated by the respondent that the notice was received and due to unavoidable circumstances, the respondent-company was unable to attend the matter on 3/3/2004. Thereafter the petitioner's advocate has issued a letter on 15/4/2004 informing the respondent-company that the matter was adjourned to 28/4/2004. The said letter was already received by the respondent-company. However, nobody appeared on 28/4/2004, nor any reply was filed by the respondent. The matter was thereafter adjourned to 15/6/2004. On that date also nobody appeared and hence

the Court has passed the order of admission as well as advertisement. The notice of admission was ordered to be published in English Daily newspapers, namely, Times of India in Bombay Edition as well as Ahmedabad Edition and Gujarati Daily newspaper, namely, Fulchhab. The said publication was already effected as directed by this Court and affidavit of publication was also filed before this Court on 21st July, 2004 along with which newspaper cuttings were also produced. Even after publication of advertisement nobody appeared on behalf of the respondent-company nor any reply has been filed.

5. In the above view of the matter, Mr.Mehta has submitted that since the dues are admitted and the decree is passed in favour of the petitioner Bank by the Court and despite service as well as publication of notice no payment has been made by the respondent-company, it becomes clear that the company has failed and neglected to discharge its liabilities towards the petitioner. The financial substratum of the respondent-company has gone down and the respondent-company is left with no adequate assets so as to meet its final liabilities. Mr.Mehta has further submitted that there are many other creditors, secured creditors, unsecured creditors as well as statutory creditors against the respondent-company and the respondent-company has failed to discharge its liabilities towards all these creditors. He has, therefore, submitted that the Company should not be allowed to carry on its business as its financial substratum has gone down. He has, therefore, submitted that this Court should pass winding up order and the Official Liquidator be directed to take charge of assets of the respondent-company.

6. Having heard the learned advocate appearing for the petitioner and having gone through the memo of petition and other documentary evidence which are produced along with this petition, the Court is of the view that the Company has lost its financial substratum and the Company is not in a position to discharge its liabilities. There appears to be no scope on the basis of which one can expect that the Company will come out from its present position. In this view of the matter, the Company is required to be wound up and hence the order of winding up of the respondent-company is passed in the present case. The Official Liquidator attached to this Court is hereby directed to take possession of the assets of the respondent-company. However, before taking inventory with the help of the valuer or before appointing security guards, the liquidator should inform the Directors of the respondent-company and should take

the prior permission of this Court.

7. With the aforesaid directions and observations this Company Petition is hereby allowed with no order as to costs.

(K.A.Puj, J.)

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